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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(San Joaquin)

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSE MANUEL SORIA,

Defendant and Appellant.

C038871

(Super. Ct. No. SF80877A)

A jury convicted defendant Jose Manuel Soria of three counts of second degree robbery (Pen. Code, §§ 211, 212.5),<sup>1</sup> three counts of second degree burglary (§§ 459, 461), and one count of attempted second degree robbery (§§ 211, 212.5, 664). The jury also found certain related enhancements to be true. The trial court imposed an aggregate sentence of 25 years 8 months.

On appeal, defendant claims the trial court abused its sentencing discretion. We disagree and affirm the judgment.

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<sup>1</sup> Further undesignated section references are to the Penal Code.

## FACTUAL BACKGROUND

On November 6, 2000, defendant committed an armed robbery of an AM/PM Mini-Market in Lodi. Defendant stole some cigarettes and several hundred dollars in cash. During the robbery, defendant's face was concealed with a bandana. Based on this incident, the jury convicted defendant of second degree robbery (count 1) (§§ 211, 212.5) and second degree burglary (count 2) (§§ 459, 461); the jury also found defendant had personally used a firearm in the commission of the offenses (§§ 12022.5, subd. (a)(1) and 12022.53, subd. (b)).

On November 7, 2000, defendant and another man robbed the Villavazo Market in Stockton. The men took several hundred dollars. Both men's faces were concealed during the robbery. Based on this incident, the jury convicted defendant of second degree robbery (count 3) and second degree burglary (count 4); the jury also found the offenses to be gang related (§ 186.22, subd. (b)(1)).<sup>2</sup>

On November 21, 2000, defendant committed armed robbery at a laundromat in Stockton. Defendant robbed one customer of a gold chain he was wearing. Defendant also demanded money from another customer, but the customer told defendant she had none. Based on this incident, the jury convicted defendant of second degree robbery (count 5), attempted second degree robbery

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<sup>2</sup> There was evidence defendant was a member of a gang, and the People presented expert testimony and related evidence to show the crime was gang related.

(count 6) (§§ 211, 212.5, 664), and second degree burglary (count 9). The jury also found that defendant had personally used a firearm in the commission of the offenses.

#### Sentencing

Prior to sentencing, the probation department filed its report with the trial court. The report suggested several circumstances in aggravation of defendant's sentence. The prosecutor similarly filed a statement alleging circumstances in aggravation, and the prosecutor asked the trial court to impose the midterm for the principal robbery offense and consecutive sentences for the remaining robbery and attempted robbery offenses. At sentencing, defense counsel alleged that there were mitigating circumstances in the case and suggested that the trial court should impose a lesser sentence.

The trial court imposed the three-year midterm for the principal offense, count 5 (the robbery of a laundromat customer), and the court imposed a 10-year enhancement based on defendant's use of a firearm in the offense. The court stated that the midterm was appropriate because "the aggravating and the mitigating factors balance."

Citing the fact that the crimes occurred at different times and involved separate acts of violence, the court imposed consecutive sentences for the robbery counts at the AM/PM (count 1) and Villavazo Market (count 3), and for the related enhancements. Citing the fact that the attempted robbery (count 6, involving another laundromat customer) involved a different victim and a separate act of violence, the court also

imposed a consecutive sentence for that offense and the related enhancement. Pursuant to section 654, the trial court stayed the sentences imposed for the burglary offenses and related enhancements.

#### DISCUSSION

Defendant claims the trial court abused its sentencing discretion. According to defendant, the aggregate sentence is unreasonably harsh in view of the alleged mitigating circumstances in the case and defendant's background. Defendant points out that the trial court could have imposed a 12-year minimum sentence if it imposed the lower term for the principal offense and concurrent terms for the other offenses.

In the trial court, defendant also argued for a lesser sentence and pointed out alleged mitigating circumstances. For the sake of argument, we shall assume defendant's argument was sufficient to avoid waiver of his sentencing claims.

Our review is, however, limited and highly deferential. Defendant is not entitled to relief absent a showing that the trial court's particular sentencing choices were erroneous. The sentencing choices at issue are the court's decision to impose the midterm for the principal offense and its decision to impose consecutive sentences for other offenses. We shall address each in turn.

First, we consider the trial court's decision to impose the midterm for the principal offense. The court has broad discretion to weigh any aggravating and mitigating circumstances and to select the appropriate sentence. (*People v. Lamb* (1988)

206 Cal.App.3d 397, 401.) Moreover, the midterm is the presumed sentence, and no explanation of reasons is even required for imposing it. (See § 1170, subd. (b); Cal. Rules of Court, rule 4.420(e).) The midterm is appropriate if neither the aggravating nor the mitigating circumstances outweigh the other. (Cal. Rules of Court, rule 4.420(a), (b).)

Here, the trial court's decision was proper since it expressly found that the aggravating and mitigating circumstances were offsetting. And though defendant challenges some of the aggravating circumstances alleged in the probation report, the record does not indicate that the trial court relied on any particular, erroneous factor. Indeed, there were undisputed aggravating circumstances that were valid in this case. For example, defendant was on probation when he committed the offenses. (See Cal. Rules of Court, rule 4.421(b)(4).) And though defendant did not physically harm anyone in the commission of the offenses, the trial court could have reasonably found he engaged in violent conduct indicating a serious danger to society. (Cal. Rules of Court, rule 4.421(b)(1).) Under the circumstances, the trial court did not abuse its discretion in imposing the midterm rather than the lower term for the principal offense.

We likewise conclude that the trial court did not err in imposing consecutive sentences. Each offense for which the court imposed a consecutive sentence involved a different victim, and each offense other than the attempted robbery also occurred at a different time and location than the principal

offense. One of the statutory criteria supporting the imposition of consecutive sentences applies if "[t]he crimes involved separate acts of violence or threats of violence." (Cal. Rules of Court, rule 4.425(a)(2).) The trial court properly concluded that each of the relevant, violent crimes fit this criterion. Moreover, with regard to the robbery offenses, the trial court also cited the fact that the crimes occurred at different times. This is another factor supporting the imposition of consecutive sentences. (See Cal. Rules of Court, rule 4.425(a)(3).)

In sum, the trial court made reasonable sentencing choices. If the resulting aggregate sentence is lengthy, it is the product of the statutory sentencing structure. And a lengthy sentence is undoubtedly warranted in this case. Defendant committed a crime spree involving multiple victims and the potential for violence. He was armed on at least two occasions, and crimes arising from the third occasion were found to be gang related.

#### DISPOSITION

The judgment is affirmed.

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CALLAHAN, J.

We concur:

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BLEASE, Acting P.J.

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NICHOLSON, J.